

Served: June 3, 1992

NTSB Order No. EA-3571

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 11th day of May, 1992

DANIEL J. WELLS,

Applicant,

v.

134-EAJA-SE-10225

BARRY LAMBERT HARRIS,  
Acting Administrator,  
Federal Aviation Administration,

Respondent.

**ORDER DISMISSING APPEAL**

The applicant has moved to dismiss the notice of appeal in this proceeding because it was not, as required by Section 821.47 of the Board's Rules of Practice (49 CFR Part 821),<sup>1</sup> filed by the Administrator within 10 days after the law judge, on February 7, 1992, issued a decision and order granting the applicant's request for attorney fees under the Equal Access to Justice Act. We will grant the motion.<sup>2</sup>

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<sup>1</sup>Section 821.47 provides as follows:

"§821.47 Notice of Appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to §821.8) a notice of appeal within 10 days after an oral initial decision or an order has been served."

<sup>2</sup>We will also grant the applicant's request, to which the Administrator has submitted no response, for leave to file a

In reply to the motion to dismiss, the Administrator, without disputing that he did not file a timely notice of appeal or offering any reason for that failure, invites the Board to treat his appeal brief, filed March 5, as a request that the Board review the law judge's decision on its own initiative. We decline the invitation. Apart from the fact that we would not exercise our authority to review the unappealed decisions of law judges in order to rescue a party from the consequences of a procedural default, the 20 day period within which the Board may take such action under its rules expired before the Administrator filed his brief.<sup>3</sup>

As it appears that the Administrator's failure to file a timely notice of appeal is not excusable for good cause shown, his appeal will be dismissed. See Administrator v. Hooper, NTSB Order EA-2781 (1988).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The applicant's motion to dismiss is granted, and
2. The Administrator's appeal is dismissed.

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)  
supplemental brief in support of the motion to dismiss which, inter alia, seeks an additional amount for attorney fees attributable to legal services performed in connection with the Administrator's appeal from the initial decision. The amount awarded by the law judge to the applicant is hereby ordered to be increased by the sum set forth (\$525.00) in the supplemental filing.

<sup>3</sup>Section 821.43 of the Board's Rules of Practice provides:

**"§821.43 Effect of law judge's initial decision, and filing an appeal therefrom.**

If an appeal from the initial decision is not timely filed with the Board by either party, or the Board on its own initiative does not decide within 20 days after the issuance of the initial decision to review it, the initial decision shall become final. However, the initial decision shall not be deemed to be a precedent binding on the Board. The timely review by the Board or the filing of such an appeal or motion shall stay the order in the initial decision."